IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRI. APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 351 OF 2005

Mr. Kirit R. Kanakiya,
R/at 14, Rohini Apartment,
Plot No. 178, 3rd floor,
Behind Rupam, Talkies,
Sion (E), Mumbai - 400 022. ... Petitioner

V/s

1. Enforcement Directorate,
   Government of India,
   Ministry of Finance,
   Deptt. of Revenue, 23/24,
   Mittal Chambers, 2nd floor,
   Nariman Point, Mumbai - 400 021.

2. Enforcement Directorate
   (Foreign Exchange Management Act)
   Ministry of Finance, Govt.of India,
   Janmabhoomi Chambers, 1st floor,
   Walchand Hirachand Marg,
   Mumbai - 400 001.

3. Union of India

4. State of Maharashtra. ... Respondents

Mr. Shirish Gupte with Prakash Naik for the petitioner.

Mr. D.N. Salvi for Respondent Nos. 1 to 3.

Mr. D.S. Mhaispurkar, A.P.P. for the Resp.No.4.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: 9TH MARCH, 2005

ORAL JUDGMENT (Per Khandeparkar, J.):

1. Heard. Perused the record.

2. Rule. By consent, Rule made returnable forthwith.

3. The only grievance of the petitioner in this petition is that the passport of the petitioner has been wrongfully withheld by the respondents on the allegation that the petitioner has not paid the penalty amount imposed by the petitioner. Undisputedly, the penalty amount imposed in adjudication order is Rs.15 lacs and out of that, Rs.3 lacs have been deposited at the time of filing of appeals by the petitioner against the order imposing the penalty. It is also undisputed fact that the appellate authority has not been constituted and, therefore, the petitioner is handicapped in obtaining any relief on the application for stay filed by the petitioner alongwith the appeals filed by the petitioner challenging the penalty amount. In the circumstances, therefore, there is absolutely no justification for the respondents to withhold the passport and more so in view of the fact that no appropriate appellate authority has been constituted to enable the petitioner to agitate against the order imposing penalty. In the circumstances, therefore, the petitioner is justified in making grievance against the respondents regarding

withholding of passport. However, since the penalty amount has been imposed and the matter has to be adjudicated by the appellate authority, the blanket order for return of the passport cannot be issued. In the circumstances, therefore, though the petitioner would be entitled for direction to return of the passport, at the same time, the respondents need to be secured by directing the petitioner to furnish a suitable bank guarantee in relation to the balance amount of the penalty of Rs.12 lacs. On furnishing such bank guarantee of any nationalized bank by the petitioner, the respondents shall return the passport to the petitioner within one week from furnishing of such bank guarantee. The bank guarantee to be furnished by the petitioner shall be kept alive till the appropriate order is passed by the appellate authority in relation to the penalty amount. Considering the fact that two separate orders were passed in relation to the adjudication of penalty amount as imposed separately, namely, Rs.10 lacs in one case and in another case it was Rs.5 lacs. In case of appeal against the penalty of Rs.5 lacs, the petitioner has earlier deposited Rs.1 lac and in case of appeal against the penalty of Rs.10 lacs, the petitioner has deposited Rs.2 lacs. Consequently, the bank guarantee should be given separately, one in

the amount of Rs.4 lacs and another for the amount of Rs.8 lacs. The respondents to intimate the petitioner within one week the authority in whose favour bank guarantees are to be given. Accordingly, the petition stands disposed of.

4. Rule made absolute in above terms with no order as to costs.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)